

# SatFACTS EXTENDED

## Volume 15 - #170

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Echostar's Nagra family smartcard conditional access controlled system is a member of the 'family'. Nagra is a 'brand name' in the CA world; NagraStar is the USA corporate entity and it is owned 50% by Swiss based Kudelski Group and 50% by USA investors of which Echostar CEO Charles Ergen is a major stockholder. And that makes NagraStar (North America) 'family' with Echostar (or EchoStar with a capital 'S'; there remains no uniformity even within appropriate corporate literature).

EchoStar's DISH Network claims to have been "formed in 1980" which is a tad untrue given the launch of service some 15 years thereafter. The truth is that in 1980 two fellows living in Texas, one of whom was named Ergen (the other was Jim DeFranco about whom little has been subsequently heard), set out with a pair of 12 foot dishes on modified boat trailers to demonstrate C-band direct reception in rural areas such as Colorado's outback. One of those two dish systems, representing 50% of their investment in a new venture, was destroyed in a road accident and from the single remaining functional system sprang the roots of today's EchoStar/Dish corporate empire.

Charles W. (his father was named William) Ergen was born to privileged parents (Oak Ridge, Tennessee; March 1, 1953); his father a nuclear physicist (Oak Ridge National Laboratory) and his mother manager of a Children's Museum (Oak Ridge). He would graduate from the University of Tennessee and follow that with a MBA degree (Wake Forest University). When the 1980 C-band explosion burst onto the American scene, Charlie was a 'brand manager' for a snack food firm (Frito Lay) in Texas.

Charlie is an intensely private and personal family individual. His wife Canteey (often mis-written as Candy or Candi given the unusual nature of the name) was an airline hostess when Charlie and Jim set out with their life savings stacked on two boat trailers. But Charlie had vision, lots of vision, and by April 1981 he and Jim DeFranco had grown the single surviving dish system into a soon-to-become major distributor for home dish

### **Court Rules in favour of EFF petition**

On September 29 Judge Richard Seeborg of the United States District Court (San Jose, California) ruled against Echostar and for satellite receiver manufacturer Freetech, Inc. The ruling stopped Echostar from pressing Freetech (aka Coolsat) distributors being forced by subpoena to provide detailed information revealing every buyer-user of the FTA (free to air) receiver sold under the 'Coolsat' brand label.

Fretech had requested a special hearing seeking a 'TRO' (temporary restraining order) late in August; their filing attracted a similar but more elegant filing from the Electronic Frontier Foundation (SF#169, September) as a 'friend of the court' (Amicus Curiae brief) also requesting the court to intercede to halt the subpoena demand placed on at least 17 receiver distributors.

The essence of the court's decision came down to a civil liberties question: Will such demands to disclose each person who over a five year period has purchased a Coolsat receiver place unreasonable demands on people who have not been named as codefendants in the Echostar suit.

Echostar maintained they were required to determine with some degree of accuracy how many receivers had been sold and more important to their case against Fretech 'what percentage of those buyers acquired this receiver with the intent of using after market modification to allow the receiver to access Echostar's DISH programming'? Echostar seeks to prove in court (case now scheduled for January 2009 hearing) this receiver (and others also being charged) "exist primarily for the purpose of defeating their (NagraStar) encryption system". Fretech of course argues they are not responsible for after-sale misuse of their product by third-party participants. We review the history here.

In this issue: Is DISH doing the right thing here?

systems headquartered in Colorado. Charlie was at the time a 'behind the scenes' kind of guy; during a major industry trade show (Washington, DC; April 1981) he would prompt Cantey to appear on behalf of the company in televised and trade publication interviews, preferring to stay just off stage out of direct view. (1/) Cantey would move from 'out front' to behind the dish as she and CW added six children to the population of Meridian, Colorado.

About which. The 'formal' home office for EchoStar/DISH is a town of fewer than 200 population (184 says the 2000 US census). Someone with time on their hands 'might' discover why by carefully studying the land owning records for the tiny community. In fact, EchoStar/DISH are state of Nevada registered corporations and once again someone with extra time on their hands would discover why by tracing Charlie's loyalty to an elderly attorney who has represented his holdings for decades. Englewood, Colorado is where EchoStar/DISH has offices; a modern granite and glass semi-impressive structure obtained when an insurance firm fell into bad times leaving them cash starved at a time when Charlie was hunting a suitable headquarters.

The 'private stories' about Charlie the human being are as noted (1/) difficult to obtain, at least from the source. He asks for and receives total loyalty from all of his employees but especially those who have been with him from the mid 90s onward. Technical guru Bob Luly (1/) told the story of a failing airline and Charlie's insight into a lifetime of 'no-charge airline passes'. CW is a frugal man, some would say to a fault. And from 1981 onward, a major portion of his life has been spent sitting in an

airplane (2/). According to Luly's recitation, a semi-major airline was in danger of going under and needed to raise several million dollars in 24 hours to stay alive. They offered 'people of substance' a 'lifetime airpass, anywhere in the world', for a one time cash investment/loan in the six figure (\$XXX,XXX) region. It was of course a gamble because if you ponied up the bucks and the airline still ended up grounded, you would be an unsecured debtor. But Charlie, reputed to be a seriously-good five card stud poker player, was a gambler. In his MBA mind, the sum of money requested he would spend in a year, perhaps two at the outside, on air travel; everything this 'lifetime pass' provided past that point was a 'winning pot'. (3/)

Charlie has been successful at hiding his life, that of his family, and his employees from virtually all press. An engineer is a semi-exception. Google Amazon.com and Brent Gale. This CW employee dates back to the early C-band days and with writing partner Frank Baylin they have cranked out a never-ending series of technical books which all pretty much take you through the same steps; installing satellite systems. Brent was responsible for the original DISH Wyoming based uplink site which put the satellite Ku-band pay-TV service on the air in (March) 1996. Prior to that he and Baylin co-wrote books with titles similar to "Satellite and Cable TV". Working for CW Brent had a built-in 'house audience'. He traveled with this writer in 1983 to visit (Sir) Arthur C. Clarke (in Sri Lanka) and was helpful if not instrumental in creating three monster size (to 8 metres) dishes for that country. It is likely but unsubstantiated that CW actually paid for this trip to Sri Lanka.

So it is March 1996 and DISH after years of struggling to get satellite licenses, programming agreements, permits and tons of money to make it all happen is ready to turn on the Wyoming uplink site. All of the money in the pot is at risk.

According to Bob Luly's smirked-filled-face recitation, something bad happened when the uplink is turned on and there is a routine test of the emergency power generating equipment; after all, you can't have a 24 x 7

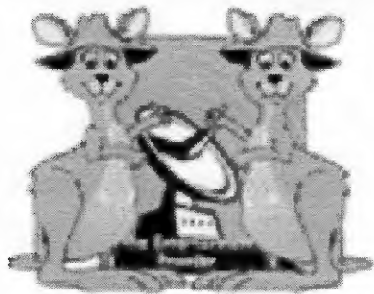
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1/ A disclaimer from Coop. As the 34th (or 30th or 50th - this sort of ranking changes daily!) wealthiest individual in the world, CW Ergen is a virtual enigma. On several occasions, feeling as if I am perhaps the best qualified person to create such an epic, I have pressed Charlie to allow me to create a 'My Dish - my story' authorized autobiography. *"I have no interest in this; I am a private family man and prefer my life to remain unrecorded"*. And so it has, with only the very rare and unauthorized Charliedote (read anecdote about CW) leaking out from the mouth's of long held close industry friends such as the recently deceased industry innovator Bob Luly (SF#162; page 12)

2/ In fact, Cantey remains active in business with a 'Travel Agency' office located on the ground floor of the EchoStar/Dish building in Englewood. Her primary client, of course, are her husband's businesses which with 22,000 on the payroll worldwide has as many as 1,200 in the air on any given day; the perfect afterlife for a stewardess!

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3/ *"Coop, Charlie here. I am in Queenstown for the weekend skiing with two of my children. Any chance of you dropping down?"* Unfortunately, not all of us possess a 'lifetime airline pass' and my chagrined response was "Sorry Charlie" - not to be confused with the Starkist Tuna advertising tag line of the Del Monte foods canned tuna product in the 60s (to 80s). *"Sorry Charlie - Starkist isn't looking for tuna with good taste but rather for tuna that tastes good."* Being 'transparent' to taste is one of the hallmarks of 'this' Charlie.



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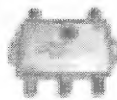
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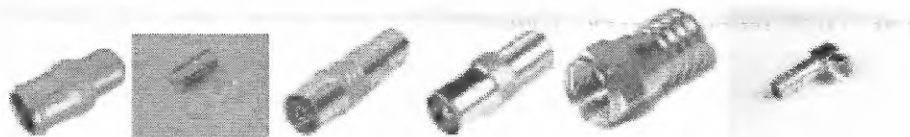
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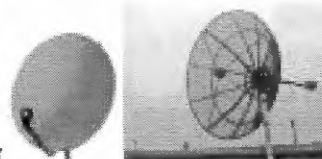
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uplink site totally dependent upon the local power company. Brent throws the switch after a few hours of operating from commercial power and zingo-bang-holy cow Batman; the uplink shuts down. Charlie is in Englewood just getting past his first level of "Now I am one" as a satellite operator; it is approximately 200 miles north to the uplink site. Without hesitation CW races to his car, an aged and well past 'use-by-date' BMW, guns the engine and heads north on highway 25 at, shall we note, 'something greater than the legal speed limit'. Hundreds of millions of dollars have just ended up in a cesspit because Brent Gale threw a switch that shut them down. Of note, it was a switch designed by Gale and possibly (the stories vary here) installed by him. The one thing CW most feared was about to happen; a headline saying something like "DISH Launches and Crashes".

Now one Luly version of this story relates the aged and barely serviceable BMW, perking along well past the 70mph limit, simply quit; too much stress. A second version says it was running fine when a pair of Colorado Highway Patrol vehicles gave chase and pulled him to a halt. Take your pick - Charlie knows the true version, we do not.

In version one Charlie pulls into the Wyoming site after doing the best his BMW could manage, but beyond the speed limit in any event, led by one CHP member and followed by another; an 'official escort' as it were. If this version is accurate, Charlie the satellite entrepreneur was far more fortunate than Charlie the tuna.

In version two, Charlie still arrives at the site but riding inside a CHP car; slightly more than an official escort; a chauffeur. Charlie the tuna is still a loser in this version.

In both variations once the damaged power switching device has been sorted, and the uplink is back on the air, when Charles W. Ergen finally arrives back home just beyond the corporate limits of Englewood, Cantey and the kids are waiting. A brand new, ten miles on the odometer, BMW is sitting there waiting for him. Charlie, the frugal Mister DISH, might never have done this for himself but a family with their own self-earned resources would. It is the kind of story that brings a tear to your eye and a lump to your throat. And of course Charlie has no reason to even discuss the story with you; it is one of those 'Englewood Urban Legends' which make the Ergens the pride of a community which holds the world's 34th (or whatever it might be today) wealthiest man in such high esteem. Even if they live in Meridian; population 184.

#### The court cases

Australian Neil Chenoweth, author of 'Rupert Murdoch: The untold story of the world's greatest media wizard', has written about the relationship between Murdoch and Charlie. In summary form, Rupert is (by the same time-line that places Charlie the 34th wealthiest man in the world) number 103. Rupert is 77 and Charlie

is 55; both born in March but a generation apart. On several occasions Murdoch has attempted to acquire the same objects Charlie owns or controls. As Chenoweth so eloquently writes, Rupert is not in Charlie's league which of course must be very intimidating to the older man. Charlie owns just a handful of companies; Murdoch owns dozens spread throughout the world yet Charlie is worth more - on paper - than Rupert. Charlie started with one satellite dish and the bent remains of a second in 1980; Rupert inherited a newspaper of some importance from his father in 1952. Rupert's reputation is of being 'brutal and dangerous' while Charlie's is in favour of - well, he said it to me recently and I quote:

"I am a fair person and you know I can be trusted."

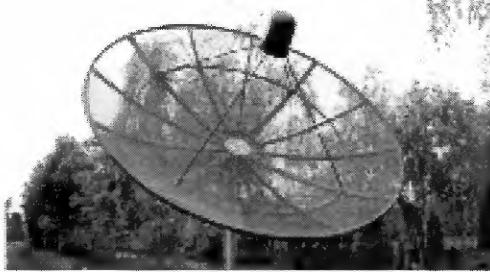
I am not free to reveal the conversation we were having when he typed those words to me - another time perhaps. But the essence here is that Rupert and Charlie are not going out to Burger King to grab a hamburger tonight; at least not together.

Rupert carries a grudge; Charlie possibly does not. They have been in court on occasion, on opposite sides - the most recent being the decision in California in April-May (SF#166; June). That case involved whether or not Murdoch's NDS had used piracy hacking techniques to disassemble the NagraStar CA system and then having done so posted the results on Internet to make DISH a vulnerable service. The court found NDS had in fact hacked a (single) NDS card but did not find they had been behind the posting of 'how-to-do-this' on Internet. Many believe the court erred in this judgment which basically allowed both DISH and NDS to claim, post the decision, "We won". In fact nobody "won" and the court awarded the grand sum of US\$1,549.69 to DISH. Observers, such as Australian Business Review's (ABR) Chenoweth, see this as a parody of the facts. In legal terms it was a 'draw'. Well, almost. As Chenoweth correctly points out, NDS had on average twenty-five (25!) lawyers in the courtroom at any one time and by his judgment spent up to US \$100 million on defending the case. Charlie had four attorneys from a small but perhaps capable Houston (Texas) firm and Chenoweth suggests CW may have invested US\$20 million attacking NDS (NDS was the defendant, DISH the plaintiff). This is unfortunately for CW another example of his 'frugal nature'; the 'old, tired, BMW story' repeated in a modern time. Charlie buys a lifetime pass on airlines for a one time bargain price; Rupert goes for broke each time with only the objective of grinding down the opposition, 'hang the cost'; 'first-class or no class'.

Which brings us to the current court cases. Viewtech, Panarex, Freetech have these field-modifiable receivers which with software gleaned from 'the web' will bust

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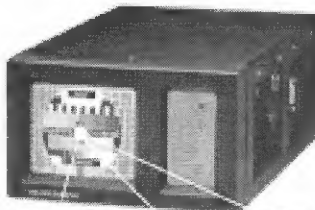
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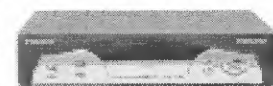
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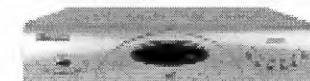


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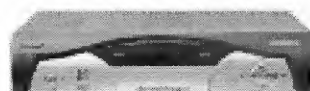


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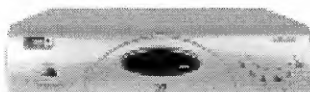
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through the Mickey-Mouse NagraStar encryption system. Charlie's people believe the receivers are *designed* for this purpose and any common sense study would come to the same conclusion. Why? Consider that Echostar itself manufactures and sells FTA receivers along with an estimated dozen other firms and *none* of these can be field modified to hack into DISH programming. So obviously *there is something* inside the Viewsat/Panasat/Coolsat receivers which encourages a hacked 'bit' of software to function in this manner. It is the Strong 'X-Box' in spades; except that the X-Box software was defeated and Charlie's NagraStar 2 CA system has not risen to the challenge.

NagraStar 3. Nagra.com claims "*The Kudelski Group has been a pioneer for more than half a century.*" That is the parent firm of NagraStar - the US version of which Charlie apparently owns half. The web site makes the statement, "*The Group (Kudelski) has decided to migrate a majority of its active smartcard/module users from the sale mode to the service mode.*" Interpretation? They realize their card technology has been hacked, badly, worldwide. So they are in the process of replacing all Nagra-Two version cards with a newer 'Version Three'. They state, "*The majority of the card replacement programs, including the transitions to service mode, are in a deployment phase, including operators such as EchoStar/Dish, (Canada's) Bell ExpressVu, Canal Satellite, Premiere and Sogecable.*" DISH competitor DirecTV, when still controlled by Murdoch, made a similar all-universe card change. There were immediate benefits - card hacking disappeared for a period although there has been a recent claw-back by pirates. What you do when you change cards is eliminate all of the pirates as of the card change but it is a matter of weeks, months, perhaps a year at longest before the pirates have the new software hacked.

Nagra has chosen to implement 'Version 3' in Europe first and in of all places, the home of the world's most competent hackers; Germany. The Canadian ExpressVu will precede - is as we write this perhaps - the DISH change out. The problem is - German hackers have taken Version 3 apart even before it is introduced in North America. *And the game goes on.*

CW's challenge is he being married to a firm in which he has a financial investment. Think of it this way. He is driving down the street, runs a red light, and slams into another vehicle. Clearly he is culpable for the accident. So he ends up in court where to his total horror he finds the driver of the car he struck was none other than the judge he now faces. OOPS.

The technology he is being forced to accept is handed to DISH from Switzerland as a 'done deal' when in fact it is a half-done deal; hackable and he is facing spending 13 million cards times some amount per card (call it US \$25 just for discussion) to implement. If you were in his

shoes, would you be anxious to invest \$325,000,000 in replacing thirteen million version 2 cards? Of course not.

So what is the 'frugal' choice here? Viewtech + Panasat + Coolsat are 'eating your lunch' by selling US\$100 receivers which with a web-free bit of software turns them into DISH receivers. Not just 'any' DISH receiver but capable of accessing even DISH's pay-per-view channels - ALL of your channels! There might be 500,000 of these out there - perhaps even 750,000. But at least half are in Canada where you cannot legally sell service anyhow. And a not insignificant hundred-thousand-plus are scattered from Mexico to Cuba to the Caribbean - again where you cannot 'legally' collect subscription fees (not that any of these are incapable of creating a pseudo USA address where at least on DISH records they are supposed to be located).

When does frugal end and fix-it begin?

This falls into the category of 'editorial opinion' and we so-state on the basis there should be no misunderstanding here.

Piracy is a never-ending challenge. Some systems, such as Nagra Two, lend themselves to defeat; others (such as NDS) take a bit more effort but the reality is sooner or later somebody, someplace, will bust it. "Anything one man can create, another can recreate". Or something like that. Nagra Two is in use in the Pacific (Fiji TV for example) and there is a constant tooing and froing between CA suppliers such as Nagra and NDS and others as to 'which system is today the most secure'. The honest answer is any advantage is temporary; the more universal and widespread any system, the greater the attraction to piracy. The 'safest' system is one that is so unpopular nobody else uses it and you are so small as to not attract the interest of pirates - who after all is said and done are gangsters most attracted by volume; hundreds of thousands of potential users, not thousands.

Charles W. Ergen, an enigma wrapped in a mystery. One of his few ventures into the public realm occurred while he was a student at the University of Tennessee; Charlie the enigma joined the Phi Gamma Delta (AKA FIJI) social fraternity. If you cannot locate and verify information about the individual, perhaps his selection of a social group can provide clues as to what drives the man.

"The rewards of (FIJI) membership extends far beyond one's college years through continued commitment to the values, the brothers and the Educational Foundation; not for college days alone." Most fraternities refer to graduate members as 'Alum' (Alumni); Phi Gams call theirs 'Graduate Brothers'. "Phi Gamma Delta exists to promote lifelong friendships, to reaffirm high ethical standards and values, and to foster personal development in the pursuit of excellence to develop responsibility, leadership, scholarship and social skills to become a fully contributing member of society." That's Charlie.

## **Update on Pacific satellite operations**

**Scheduled launches:** None scheduled.

**Optus C1/156E:** "Optus has added 3 new TV channels, 2 data; On T5/12.487V, Sr 27.800, 3/4 has 'BBC Knowledge at V1071, A1072 with a pair of data PIDs. This (CA) channel is in use with a data rate indicating standard definition. On T14/12.438H, Sr 27.800, 3/4 a new CA channel which is labeled '111' and apparently a test (V1071, A1072). This appears to have the same 'BBC Knowledge' service as 12.487 mentioned previously. On T17/12.558H, Sr 27.800, 3/4 'CBeebies' is new and apparently has replaced the previously available 'Biography Channel'. V1121, A1122 with EPG titles such as 'Divorce Court' and 'The Insider'. Then there are two new data channels on 12.305H, Sr 30.000, 3/4 Austar; 'BOv6' and 'BOFS' but running low data rates and CA." (IF, Qld.)

**Optus D2/152E:** "NRL feeds, FTA, have been on 12.660V (Sr 6.670, 3/4) labeled 'GCHD01' in widescreen standard definition. These same games are aired live on 9 Net but the camera locations are different from nine's. Other FTA feeds noted on 12.680V (6.670, 3/4) have included 'V8 Supercar'. Another unusual one - on ABC newsfeed channel 12.544H, Sr 6.980, 3/4 with unusual PIDs (V4192, A4195 and A4197) 'VFL - Victory Football League'. UBI's newest Coptic religious channel, 'CTV' (Robena Mowgoud) on 12.421H (Sr 22.500, 3/4) has switched to CA although the second Coptic channel Aghapy, PACE and the Italian based Roman Catholic channel remain FTA on the same MCPC. Aurora Business on 12.407V (Sr 30.000, 2/3) has been running 'SKY 7' as an audio and data service for SKY Racing but no video. It now has new PIDs (V544, A545) with a video data rate of around 2MBit/s and the EPG label reads 'SKY 7 - Trackside Virtual Racing'. (IF, Qld.) "In mid-September Globecast 12.706V (Sr 22.500, 3/4) replaced Indian pay-TV 'TTV' with 'GTV' (V1760, A1720). The V and A PIDs for 'CGN' (Christian Asian service) on 12.706V and 'DUNA' were changed - reload for the new numbers. 'CCTV9' remains labeled on 12.545V (Sr 22.500, 3/4) but there has only been a test card there since mid-September. By the way, 12.545V is somewhat weaker than all other Globecast MCPCs, is only carrying 3 TV and 1 radio, and could easily have another 9 or so TV added" (AI)

**Soapbox:** "Late in September Optus made two changes to the pages on 'Info 156E' (12.407V, Sr 30.000, 2/3) adding a new (twelfth) page that reads:

'Smartcard Reactivation. If your smartcard has operated before but has since stopped, you can request an automatic and immediate over-the-air reactivation command. Have your 11 digit smartcard number ready and phone: 1300 301 680, select Option 3, and follow the prompts.' My version 1 card is still playing in under a

minute. So obviously nothing has happened as of today (October 3). I am guessing Optus is not hitting all of the Aurora cards simultaneously; perhaps (a guess) Version 1 one month, Version 2 the next? The second change was retarded; a page advertisement offering Broadband with a December 30 2008 expiration was replaced with one offering the same package but expiring March 31, 2008. Oops." (IF, Qld.) "SFE #169 reported '17% of Britons watch TV on Internet. During the Olympics 'Yahoo 7' only aired two hours a day on their website while several overseas services such as from Canada had fulltime coverage on multiple channels at same time. I suspect Australians do not use the web to watch TV primarily because it is not a friendly environment and the cost of downloading real time video is a hurdle to be solved. There are some (Australian) ADSL2+ plans that would seem to help this cost factor but the fine print sets it straight. TPG has a 200GB plan for A\$79.99 per month but in the tiny print it is 60GB in peak hours (9AM to 4AM) and 140GB in off-peak (the remaining five hours - 4AM to 9AM). 60GB sounds huge but how many hours of live TV does that work out to be?" (AI, NSW)

### **NDS Loses court decision**

Sky Italy (Murdoch) has been successfully sued to force NDS to produce NDS CI modules.

### **Freeview NZ Update**

Consortium claims July-September Olympics period added 37,980 Freeview box sales; total now 160, 496. Major hurdle remains with lack of Prime channel on either satellite or terrestrial. Government review expected by August 2009.

### **Addendum: Viewsat/Panasat/Freetech cases**

As reported page 1 (here), a court ruling has stopped the collection of FTA receiver data by EchoStar. The original case brought against Viewsat is now scheduled for a new hearing sometime after October 24. Panasat attorneys had been scheduled to follow the expedited September 15th court hearing of Freetech/Coolsat on September 29 to consider a similar freeze against their distributors being forced to turn over distributor information. Apparently some papers were improperly filed, the hearing is in limbo juggling through the California Federal Court system as SFE goes to press. A number of distributors for Freetech/Coolsat did in fact turn in their distributor list information as EchoStar had demanded with subpoenas prior to the September 29th court decision; how or if EchoStar can in fact use this information to contact names on the lists remains unknown.

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